

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 1:06-0532

TWO REAL PROPERTIES SITUATED  
IN BLUEFIELD, MERCER COUNTY,  
WEST VIRGINIA, TOGETHER WITH  
ALL IMPROVEMENTS THEREON AND  
APPURTENANCES THERETO,

Defendants.

(Maurice Taft Gibson,  
Criminal No. 1:05-00126-01;

Tonya S. Gibson,  
Criminal No. 1:05-00126-05)

**MEMORANDUM OPINION AND ORDER**

Pending before the court is the United States' motion for summary judgment (doc. # 19). For the reasons explained below, that motion is GRANTED.

**I. Background**

**A. Criminal Case**

Maurice Gibson, the leader of an extensive drug distribution operation, was named in eighteen counts of a twenty-count indictment<sup>1</sup> charging Gibson and others with various drug

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<sup>1</sup> Gibson was not named in Counts Six and Seven.

distribution and money laundering offenses.<sup>2</sup> Count One of the Indictment charged Gibson and others with conspiring to distribute quantities of cocaine and oxycodone, in violation of 21 U.S.C. § 846. Counts Two, Three, Four, and Thirteen charged Gibson with distributing oxycodone, on or about April 20, 2004, April 26, 2004, May 10, 2004, and February 7, 2005, respectively. Counts Eleven and Fourteen charged Gibson with distributing cocaine, on or about October 27, 2004, and March 9, 2005, respectively. Count Twelve charged Gibson with distributing a quantity of hydromorphone, also known as "Dilaudid," on or about October 28, 2004.

Count Five charged that, on or about May 11, 2004, Gibson, aided and abetted by Hector Reinat, knowingly and intentionally distributed a quantity of cocaine. Counts Eight and Ten charged that, on or about June 10, 2004, and September 16, 2004, respectively, Gibson, aided and abetted by Christina Louise Arnoto, knowingly and intentionally distributed a quantity of oxycodone. Count Nine charged that, on or about July 27, 2004, Gibson, aided and abetted by Robert L. Gravely, knowingly and intentionally distributed a quantity of oxycodone.

Counts Eighteen, Nineteen, and Twenty all charged that Gibson engaged in specific acts of money laundering or conspiracy

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<sup>2</sup> Counts Fifteen, Sixteen, and Seventeen were dismissed upon motion of the United States.

to commit money laundering. His wife and co-defendant, Tonya Gibson, was also charged in Count Eighteen (conspiracy to commit money laundering) and Count Nineteen (money laundering).

After a three-day trial to a jury, Gibson was found guilty on all counts. By Order entered February 26, 2007, the court granted Gibson's third motion for a new trial as to Counts One, Eight, and Ten. The court later dismissed those counts on the government's motion. Gibson was sentenced to 240 years imprisonment, consisting of 20 years on each count of conviction to run consecutively, three years of supervised release on each count of conviction to run concurrently, and restitution in the amount of \$9,202.18.

Prior to trial, Tonya Gibson pled guilty to the money laundering charge set forth in Count 19 of the indictment, that is, concealing the source of drug proceeds used to purchase a 2003 Cadillac Escalade by making a materially false statement about her true income on a credit application with GMAC. On June 22, 2006, Tonya Gibson was sentenced to a term of imprisonment of 66 months and a three-year term of supervised release.

B. Civil Forfeiture

On June 29, 2006, pursuant to 18 U.S.C. §§ 983 (a) and 985, the United States filed a Verified Complaint of Forfeiture seeking to forfeit the defendant real properties, together with all improvements thereon and appurtenances thereto, on the

grounds that the properties constituted proceeds of, or were used to facilitate the commission of, violations of federal controlled substance laws. See 21 U.S.C. §§ 881(a)(6) and (7). The United States also alleged that the properties were forfeitable for having been involved in violations of 18 U.S.C. §§ 1956 and 1957, pursuant to 18 U.S.C. § 981(a)(1).<sup>3</sup> The property listed in the Verified Complaint for Forfeiture consists of two real properties: (1) a residence known as 1008 Albemarle Street, Bluefield, Mercer County, West Virginia; and (2) a residence known as 2216 Toledo Street, Bluefield, Mercer County, West Virginia. Both properties are titled solely in the name of Tonya Gibson.

Maurice Gibson and Tonya Gibson were served with the Verified Complaint of Forfeiture and the Notice of Complaint for Forfeiture Against Real Property on June 30, 2006. The Notice of Complaint directed the Gibsons to file a Verified Statement of Interest within 30 days of service and to file an answer to the complaint within 20 days of filing their statements of interest.

On July 17, 2006, Maurice Gibson filed an answer to the Verified Complaint and a motion for appointment of counsel. He did not file a Verified Statement of Interest. On July 24, 2006,

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<sup>3</sup> According to 18 U.S.C. § 981(a)(1)(A), "[a]ny property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957, or 1960 of this title, or any property traceable to such property . . . is subject to forfeiture to the United States."

Tonya Gibson filed an answer to the Verified Complaint and a motion for appointment of counsel. She also failed to file a Verified Statement of Interest.

In accordance with the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, the United States published a legal notice of the forfeiture in The Bluefield Daily Telegraph on July 14, 21, and 28, 2006. No other claims have been filed for either of the properties pursuant to the legal advertisement.

By Order entered January 16, 2007, Magistrate Judge VanDervort granted the Gibsons' motions for appointment of counsel to promptly assess their clients' standing to contest forfeiture of the properties. On February 28, 2007, Tonya Gibson, by appointed counsel, filed an answer with affirmative defenses. No further documents have been filed on behalf of either Maurice Gibson or Tonya Gibson nor have they filed a Verified Statement of Interest.

On July 30, 2009, the United States filed a motion for summary judgment and for a final order of forfeiture. Maurice Gibson did not file a response to the motion. Tonya Gibson filed a motion for an extension of her deadline for responding to the summary judgment motion. The court granted Tonya Gibson's motion, giving her until September 1, 2009, to respond to the government's motion. Despite being granted an extension of time,

Tonya Gibson has not filed a response in opposition to the motion for summary judgment.

## **II. Standard of Review**

Turning first to the issue of summary judgment, Rule 56 of the Federal Rules of Civil Procedure provides that

[t]he judgment sought shall be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). The moving party has the burden of establishing that there is no genuine issue as to any material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). As the United States Supreme Court of Appeals stated in Celotex, "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 322.

Once the moving party has met its burden, the burden then shifts to the nonmoving party to produce sufficient evidence for a jury to return a verdict for that party.

The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff. The judge's inquiry, therefore, unavoidably asks whether reasonable jurors could find, by

a preponderance of the evidence, that the plaintiff is entitled to a verdict . . . .

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 250-51. Significantly, "a party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." Id. at 256. Finally, "[o]n summary judgment the inferences to be drawn from the underlying facts . . . must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).

Summary judgment may be granted in civil forfeitures where this standard is met. See, e.g., United States v. One 1987 Mercedes Benz 300E, 820 F. Supp. 248, 253 (E.D. Va. 1993) (granting summary judgment in favor of government where there was no material issue of fact). Furthermore, summary judgment may be granted where a claimant has asserted an innocent owner defense. See, e.g., United States v. One Parcel of Property Located at 755 Forest Road, 985 F.2d 70, 73 (2d Cir. 1993) (rejecting innocent owner defense and affirming summary judgment granted against wife of target of narcotics investigation where narcotics and drug paraphernalia had been found in their shared bedroom).

### III. Analysis

Pursuant to the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), the United States bears the initial burden of establishing, by a preponderance of the evidence, that the defendant properties are forfeitable. 18 U.S.C. § 983(c)(1); United States v. Mondragon, 313 F.3d 862, 865 (4th Cir. 2002). "Under the preponderance of the evidence standard, the Government must show that the relevant facts are more likely true than not." U.S. v. \$864,400.00 in U.S. Currency, 2009 WL 217249, \*2 (M.D.N.C. July 20, 2009) (citing United States v. Kiulin, 360 F.3d 456, 461 (4th Cir. 2004)).

In determining whether property is subject to forfeiture, the government may rely on evidence gathered after the complaint is filed. 18 U.S.C. § 983(c)(2) ("[T]he government may use evidence gathered after the filing of a complaint for forfeiture to establish, by a preponderance of the evidence, that the property is subjected to forfeiture."). "Moreover, where the Government contends that property was used to commit or facilitate the commission of a criminal offense, such as illicit drug trafficking, the Government must establish, by a preponderance of the evidence, that a 'substantial connection' exists between the property to be forfeited and the criminal activity prohibited by statute." United States v. \$147,900.00 in U.S. Currency, 2009 WL 903356, \*7 (M.D.N.C. 2009) (quoting 18



U.S.C. § 983(c)(3)). "[F]actors that weigh in favor of property being either a direct product of illicit drug activity or traceable to the activity as proceeds include `where a defendant's verifiable income cannot possibly account for the level of wealth displayed and where there is strong evidence that the defendant is a drug trafficker.'" Id. (quoting United States v. Thomas, 913 F.2d 1111, 1114 (4th Cir. 1990)).

The Gibsons' convictions for drug trafficking and/or money laundering offenses from about October 2003 through May 19, 2005, collaterally estop them from denying that they were involved in those activities during that time period. See United States v. \$31,697.59 Cash, 665 F.2d 903, 905-06 (9th Cir. 1982); Rimmer v. Fayetteville Police Dept., 567 F.2d 273, 276 (4th Cir. 1977); Moore v. United States, 360 F.2d 353, 355 (4th Cir. 1965), cert. denied, 385 U.S. 1001 (1967).

A. Trial Testimony of IRS Special Agent Stephen Dempsey

At the criminal trial of Maurice Gibson, IRS Special Agent Stephen Dempsey testified regarding the financial investigation and analysis he conducted involving the income and expenditures of Maurice and Tonya Gibson from 1999 through June 2005. See Trial Testimony of Agent Stephen Dempsey, March 10, 2006, Tr. at 43-99. As part of his analysis, Agent Dempsey reviewed the federal income tax returns filed by the Gibsons. Tr. at 45. Agent Dempsey testified the Gibsons reported the

following amounts of adjusted gross income on their federal tax returns and received the following refunds and earned income credits for the operative period:

<u>Tax Year</u>	<u>Maurice</u>	<u>Tonya</u>	<u>Refund/EIC</u>
1999	Did not file	\$10,843	\$4,180
2000	Did not file	\$12,748	\$3,816
2001	Did not file	\$13,421	\$4,599
2002	Did not file	\$14,814	\$5,155
2003	Did not file	\$10,453	\$5,036
2004	\$ -1.00 income	\$8,905	\$3,607
2005	n/a	n/a	\$3,699

Tr. at 45-49.

Agent Dempsey also testified regarding additional sources of funds that the Gibsons acquired during that same time period: (1) \$48,000 in insurance proceeds from dwelling/casualty loss; (2) \$80,000 in proceeds from the sale of five real properties which were acquired and then sold in the name of Tonya Gibson; (3) \$43,399.67 in income from investment in gold bullion; and (4) loan proceeds in the amount \$57,600. Tr. at 50-56. According to Agent Dempsey, the total source of legitimate funds between 1999 and 2005 was \$329,914.67. Tr. at 76, 80; Exhibit E-2 to Government's Motion for Summary Judgment.

Agent Dempsey also testified regarding the Gibsons' expenditures during the same time period and stated that their

expenditures were \$498,471.07. Tr. at 76-77, 80; Exhibit E-2 to Government's Motion for Summary Judgment. Such expenditures included:

- (1) \$30,993.36 for the purchase of real property;
- (2) \$82,103.47 for the purchase of the Gibsons' residence at 1008 Albemarle Street. According to the deed, the purchase price of the property was \$74,500 in 2001 and the actual loan payoff in early 2004 was \$82,103.47. Numerous \$1,000 cash payments on the house came from Paul Arnoto who wrote checks to "cash" with a notation in the memo line that it was for "advertising expense." Tonya Gibson had endorsed the checks. A total of approximately \$62,000 in cash payments, including the Arnoto checks, were made on the Albemarle mortgage between 2001 and early 2004 when it was paid off;
- (3) an investment of \$87,388 in gold bullion;
- (4) \$47,883.98 for a 2002 Cadillac Escalade of which \$18,670 was paid in cash;
- (5) \$20,920.94 for a 2003 Cadillac Escalade of which \$8,000 was paid in cash and monthly payments on the remaining balance were \$717.83. Tonya Gibson applied for financing for this vehicle and

stated her income was \$84,000 per year, far in excess of what she reported to the IRS for that same year;

(6) \$3,180 for a 2001 Kawasaki motorcycle;

(7) \$6,900.51 for a 2002 Yamaha 4-wheeler;

(8) \$19,000 for a 2002 Pontoon boat, of which \$3,900 was paid in cash;

(9) \$30,017.88 for an airplane, consisting of the \$26,000 purchase price and an amount paid in cash for repairs to the plane;

(10) \$60,758 for jewelry, including a \$33,000 Rolex watch;

(11) \$15,067.90 in miscellaneous cash purchases;  
and

(12) \$109,357.03 in payments on six credit card accounts.

Tr. at 57-73; Exhibit E-2 to Government's Motion for Summary Judgment.

Based on the foregoing, Agent Dempsey testified that the Gibsons' expenditures exceeded their legitimate sources of income by \$168,556.40. Tr. at 80; Exhibit E-2 to Government's Motion for Summary Judgment.

B. The Albemarle Property was Purchased Primarily with  
Illegal Drug Proceeds and, therefore, is Forfeitable

According to 21 U.S.C. § 881(a)(6), "[a]ll moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter . . . shall be subject to forfeiture to the United States and no property right shall exist in them."

As noted above, Agent Dempsey testified regarding numerous cancelled checks that Paul Arnoto had written to "cash" that were used to pay the mortgage on the Albemarle property. Tr. at 59-61. Tonya Gibson's signature was written on the backs of the checks as the endorser. Tr. at 61. According to Agent Dempsey, the Gibsons paid off an approximate \$82,000 mortgage within three years of purchasing the property. Tr. at 59-61. Agent Dempsey's analysis of the Gibsons' legitimate sources of income for that three-year period established that they did not have sufficient income from legitimate sources to pay off the Albemarle mortgage in three years. Furthermore, there was ample evidence at trial of Gibson's involvement in narcotics trafficking during the same time period. Based on the foregoing, the United States has shown by a preponderance of the evidence

that the a substantial connection exists between the Albemarle property and the Gibsons' criminal activity and that the property constitutes proceeds of drug trafficking.

C. Affidavit of William T. "Ted" Jones

Bluefield City Police Detective Ted Jones was an investigator with the Southern Regional Violent Crime and Drug Task Force. Jones Affidavit ¶ 2(attached as Exhibit F to Government's Motion for Summary Judgment). Jones was involved in the investigation of illegal drug trafficking and money laundering offenses committed by Maurice Gibson and others beginning in 2001, and continuing through indictment and sentencing. Jones Aff. ¶ 3. Through his investigation, Jones became familiar with key Gibson associates, including Hector Reinat, Tina Arnoto, Dowan Clayton, and Edward Hooks. See id.

During the course of his investigation, Detective Jones was personally involved in conducting surveillance of Gibson's activities through actual observation and the use of a pole camera that was installed adjacent to the property deeded to Tonya Gibson at 2216 Toledo Street. Jones Aff. ¶ 4. Around April 2004, Hector Reinat,<sup>4</sup> a known drug dealer and associate of Gibson, resided at 2216 Toledo Street. Reinat was observed driving a vehicle registered to "Jedha or Alicia Brown, 2216

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<sup>4</sup> Reinat was one of the Gibson's co-defendants in the criminal proceeding.

Toledo Street." Id. A phone number used by Maurice Gibson to facilitate drug deals was registered to Amie E. Kisker at 2216 Toledo Street. Id.

Detective Jones observed Gibson and his associates at the Toledo Street property on numerous occasions and, more specifically, before and after their participation in various drug deals with a confidential informant. Id. On more than one occasion, Gibson was observed leaving the Toledo Street residence before a drug deal and returning to the residence after the deal had been completed. Id.

On May 19, 2005, the date of the murder of the aforementioned confidential informant, Gibson, Edward Hooks, and Devin Clements were observed at the Toledo Street residence. Id. After the murder, Clements returned to the house on Toledo Street and ran from Detective Jones when he was approached. Id.

D. The Toledo Street Property was Substantially Connected to Drug Trafficking and, therefore, is Forfeitable

According to 21 U.S.C. § 881(a)(7), "[a]ll real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment . . . shall be subject to forfeiture to the United States and no property right shall exist in them."

As noted above, under CAFRA, the forfeiture of facilitating property requires a "substantial connection" between the offense and the property. 18 U.S.C. § 983(c)(3). "The hurdle posed by the 'substantial connection' requirement is not . . . a particularly high one." United States v. Borromeo, 995 F.2d 23, 26 (4th Cir. 1993).

The United States has shown by a preponderance of the evidence that the Toledo Street property is subject to forfeiture and that there was a substantial connection between the property and drug trafficking. The affidavit of Detective Jones establishes that the Toledo Street property was used by Gibson associates as a place to live, that Gibson met with his associates at the property both before and after drug deals, and that a cell phone used by Gibson to facilitate his illegal activity was billed to the property. On many of the controlled buys involving Gibson and his associates and the informant, Gibson or his associates are seen leaving the Toledo Street property prior to the drug deal. Likewise, after the deal was completed, the individuals would return to Toledo Street.

E. Innocent Owner defense

The United States having met its burden of showing the defendant properties are subject to forfeiture, it then falls to Maurice Gibson or Tonya Gibson to show that he or she is entitled to the defendant properties. Under CAFRA, a claimant may defeat



a forfeiture by showing that he or she is an "innocent owner." 18 U.S.C. § 983(d)(1) sets forth the requirements to assert an innocent owner defense. To do so, the claimant must show by a preponderance of the evidence that he or she (1) had no knowledge of the conduct giving rise to the forfeiture; or (2) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property. 18 U.S.C. § 983(d)(2)(A).

1. *Maurice Gibson*

The United States contends that Maurice Gibson lacks both Article III and statutory standing to challenge the forfeiture and, therefore, his responsive pleading should be stricken and summary judgment be granted against Gibson and in favor of the United States. "In forfeiture, as elsewhere, [the court] must distinguish between standing conferred by statute and the standing requirements of Article III to the Constitution."

United States v. Contents of Accounts Nos. 3034504504 and 144-07143 at Merrill Lynch, Pierce, Fenner and Smith, Inc., 971 F.2d 974, 984 (3d Cir. 1992). To have Article III standing, Maurice Gibson must show that he has "a colorable ownership, possessory or security interest in at least a portion of the defendant property." United States v. \$515,060.42 in United States Currency, 152 F.3d 491, 497 (6th Cir. 1998). 18 U.S.C. § 983(d)(6)(A) defines "owner" as "a person with an ownership

interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security interest, or valid assignment of an ownership interest."

On July 17, 2006, Maurice Gibson filed a document in this case wherein he stated:

2. I hereby let you know that I contest any forfeiture of any property that I have an interest in.

3. I hereby state that I have in interst [sic] in the property listed in the complaint, because I either own it outright by deed or have an interest in the property because I am married to the owner (Tonya Gibson).

As noted earlier, the defendant properties are titled solely in the name of Tonya Gibson. In West Virginia, ownership of real property is dictated by the deed. See W. Va. Code § 36-6-1 ("No estate . . . in lands . . . shall be created . . . unless by deed or will."). Maurice Gibson is not listed on the deeds for either of these properties and never has been. Accordingly, he is not the owner of the properties.

Furthermore, Maurice Gibson is not an owner of the properties solely because he is married to the properties' owner, Tonya Gibson. Under West Virginia law, married persons can own real property acquired during the marriage solely in their own

name and can transfer such real property without the necessity of the other spouse's approval because the non-owner spouse does not have a present, vested interest in the real estate that is titled solely in the name of the other spouse. W. Va. Code § 43-1-2.<sup>5</sup> An unvested marital estate is insufficient to confer Article III and statutory jurisdiction. See United States v. Schifferli, 895 F.2d 987, 989, n.1 (4th Cir. 1990) (wife whose name was not on deed lacked standing even though she would obtain ownership interest in the event of termination of the marriage); see also United States v. Cochenour, 441 F.3d 599, 601 (8th Cir. 2006) (Missouri statute regarding tenants by the entirety ownership of marital property had limited applicability to dissolution of marriage, and thus did not provide wife with ownership interest

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<sup>5</sup> Pursuant to W. Va. Code § 43-1-2(b), "[a]ny married person who conveys an interest in real estate shall notify his or her spouse prior to or within thirty days of the time of the conveyance if the conveyance involves an interest in real estate to which dower would have attached if the conveyance had been made prior to the date of enactment of this statute." The statute goes on to state that "[w]hen a married person fails to comply with the notification requirements of this section, then in the event of a subsequent divorce within five years of said conveyance, the value of the real estate conveyed, as determined at the time of the conveyance, shall be deemed a part of the conveyancer's marital property for purposes of determining equitable distribution or awards of support, notwithstanding that any consideration for said interest in the real estate may already be included in the marital property." W. Va. Code § 43-1-2(d).

Unlike dower, which gave the non-owner spouse a vested, inchoate right in the real estate owned by the other spouse, see Meadows v. Belknap, 199 W. Va. 243, 247, n. 8 (1997), the notice of conveyance provision merely does not create a lien or claim by the non-owner spouse in the real estate.

in property owned solely by husband which was subject of drug forfeiture order); United States v. 9844 S. Titan Court, 75 F.3d 1470, 1478-79 (10th Cir. 1996) (rejecting argument under Colorado law that spouse had current legal or equitable interest in marital property titled in other spouse's name); United States v. Premises Known as 717 S. Woodward Street, Allentown, Pennsylvania, 2 F.3d 529, 535-36 (3rd Cir. 1993) (claimant whose husband acquired property at issue during marriage was not "owner" of property under Pennsylvania law and did not have standing to assert innocent owner defense in federal forfeiture action as marital property provision of Pennsylvania divorce statute did not confer ownership interest outside context of equitable distribution).<sup>6</sup> Based on the foregoing, Maurice Gibson does not possess Article III standing to contest the forfeiture.

Maurice Gibson also lacks statutory standing herein. Rule C(6)(a)(I), Supplemental Rules for Certain Admiralty and Maritime Claims, requires that a person who asserts an interest

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<sup>6</sup> Similarly, pursuant to West Virginia Code § 48-7-108, "[a]s to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest in estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an order under the provisions of this article . . . . "

or right against property involved in a forfeiture must "file a verified statement identifying the interest or right" within 30 days after service of the complaint. Maurice Gibson has never filed a verified statement of interest herein and, therefore, it is wholly appropriate for this court to strike his claim for lack of standing. See United States v. \$12,126.00 in United States Currency, 2009 WL 2156960, \*2 (11th Cir. 2009) (district court entitled to insist upon strict compliance with the Supplemental Rules and strike claim for lack of standing where procedural requirements were not heeded).

Finally, even if Maurice Gibson possessed statutory and Article III standing to contest the forfeiture, he has not satisfied his burden of showing he is an innocent owner by a preponderance of the evidence. 18 U.S.C. § 983(d)(1).

2. *Tonya Gibson*

Tonya Gibson's innocent owner defense must likewise fail. As noted above, to satisfy her burden of showing that she is an innocent owner, Tonya Gibson must show by a preponderance of the evidence that she (1) had no knowledge of the conduct giving rise to the forfeiture; or (2) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property. 18 U.S.C. § 983(d)(2)(A). Given her conviction in the underlying criminal proceeding as well as the lack of evidence offered on

her behalf herein, she cannot establish that she is an innocent owner and defeat the forfeiture.

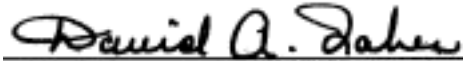
#### **IV. Conclusion**

Because no material facts remain in dispute, this matter is ripe for summary disposition. The undisputed facts of record make clear the defendant properties are properly forfeited under 21 U.S.C. § 881 and, therefore, the government is entitled to summary judgment. Counsel for the government is directed to submit an appropriate judgment order to the court.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record.

IT IS SO ORDERED this 29th day of September, 2009.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge